

ORDER NO. 2235

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Mark Acton, Vice Chairman; and
Robert G. Taub

Market Dominant Product Prices
Inbound Market Dominant Multi-Service Agreements
with Foreign Postal Operators 1

Docket No. R2015-1

Korea Post – United States Postal Service
Bilateral Agreement (MC2010-35)
Negotiated Service Agreement

ORDER APPROVING ADDITIONAL INBOUND MARKET DOMINANT
MULTI-SERVICE AGREEMENT WITH FOREIGN POSTAL OPERATORS 1
NEGOTIATED SERVICE AGREEMENT

(Issued October 31, 2014)

I. INTRODUCTION

The Postal Service seeks approval of a Type 2 rate adjustment affecting the inbound portion of a bilateral agreement with Korea Post and a revision concerning settlement procedures (2015 Agreement), and inclusion of the 2015 Agreement within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal

Operators 1 (MC2010-35, R2010-5, and R2010-6) (Foreign Postal Operators 1) product.¹ For the reasons discussed below, the Commission approves the Request.

II. BACKGROUND

Product history. The Commission approved the addition of the Foreign Postal Operators 1 product to the market dominant product list in Order No. 549, following consideration in Docket Nos. MC2010-35, R2010-5, and R2010-6, and concurrently approved the inclusion of an agreement with China Post Group (Baseline Agreement) and another agreement within the new product.² Since then, the Commission has approved the inclusion of other agreements within the Foreign Postal Operators 1 product, including the agreement with Korea Post that is the subject of this modification (Docket No. R2013-9 Agreement).³

Instant docket. The Postal Service's filing includes the Request and three attachments: (1) an application for non-public treatment of material filed under seal; (2) a copy of the 2015 Agreement; and (3) a redacted copy of the Docket No. R2013-9 Agreement. The filing also includes supporting financial workpapers. In addition to a rate adjustment for delivery confirmation scanning for small packets, the Request seeks to extend the term of the existing Agreement, and revise the "Financial Requirements" section of Annex 2 of the Agreement by clarifying procedures related to settlement charges. Request at 1-2.

Effective date and duration. The 2015 Agreement is intended to take effect December 1, 2014. *Id.* at 2. It is intended to remain in effect through November 30, 2015, unless terminated sooner. *Id.* Attachment 2 at 1.

¹ Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Bilateral Agreement, October 15, 2014 (collectively, Request). The Request was filed pursuant to 39 C.F.R. 3010.40 *et seq.*

² See Docket Nos. MC2010-35, R2010-5 and R2010-6, Order Adding Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 to the Market Dominant Product List and Approving Included Agreements, September 30, 2010 (Order No. 549).

³ See, e.g., Docket No. R2013-9, Order No. 1864, Order Approving an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 (with Korea Post), October 30, 2013.

Requests for reporting exceptions. The Postal Service seeks two reporting exceptions. These requests are discussed in the Commission Analysis section.

Initial Commission action. On October 16, 2014, the Commission issued Order No. 2216 providing public notice of the Postal Service's filing; establishing a docket for consideration of the filing's consistency with applicable statutory policies and Commission regulations; appointing a Public Representative; and providing interested persons with an opportunity to comment.⁴

III. THE POSTAL SERVICE'S POSITION

39 U.S.C. § 3622(c)(10) requires the Commission to assess whether the agreement: (1) improves the net financial position of the Postal Service or enhances the performance of operational functions; (2) will not cause unreasonable harm to the marketplace; and (3) will be available on public and reasonable terms to similarly situated mailers. With respect to the first and second criteria, the Postal Service provides information regarding expected financial improvements, costs, volumes, and revenues in the financial workpapers and incorporates by reference relevant portions of its Docket No. R2013-9 filing. Request at 4-5. The Postal Service asserts that the third criterion (availability on public and reasonable terms to similarly situated mailers) is not applicable, given there are no entities that are similarly situated to Korea Post in their ability to tender broad-based small packet flows from the Republic of Korea under similar operational conditions, nor any other entities that serve as a designated operator for Letter Post originating in the Republic of Korea. *Id.* at 6-7.

Functional equivalence. The Postal Service asserts that the 2015 Agreement is functionally equivalent to the Baseline Agreement because both agreements are constructed from a similar template and contain many similar terms and conditions.

⁴ Notice and Order Concerning Modification of Bilateral Agreement with Korea Post, October 16, 2014 (Order No. 2216).

Id. at 8. The Postal Service notes that both agreements establish a service for delivery confirmation scanning with Letter Post small packets, are with foreign postal operators, and have similar cost characteristics as they relate to services for delivery confirmation scanning with Letter Post small packets. *Id.* The Postal Service acknowledges and identifies differences between the agreements, but does not consider that the specified differences detract from the conclusion that the 2015 Agreement is functionally equivalent to the baseline China Post Agreement. *Id.* at 8-10.

IV. COMMENTS

The Public Representative filed comments pursuant to Order No. 2216.⁵ No other comments were received.

Statutory criteria. With respect to criteria 1 and 3, the Public Representative concludes that the Postal Service makes reasonable arguments that these criteria are not implicated in this Agreement. PR Comments at 2. With respect to criterion 2, he concludes, among other things, that the negotiated rates for inbound Letter Post small packets with delivery scanning represent an improvement compared to the default terminal dues rates established by the UPU. *Id.* He also states that the 2015 Agreement should improve the operational performance of the Postal Service. *Id.*

Functional equivalence. The Public Representative notes that the Postal Service asserts that the Agreement is functionally equivalent to the Baseline Agreement and identifies material differences. *Id.* at 2. He concludes that these differences do not affect the similarity of the cost or market characteristics of the two agreements. *Id.*

⁵ Public Representative Comments on Modification of Bilateral Agreement with Korea Post, October 23, 2014 (PR Comments).

V. COMMISSION ANALYSIS

The Commission has reviewed the Request, the Agreement, the financial analyses provided under seal, and comments filed by the Public Representative.

Statutory criteria. Under 39 U.S.C. § 3622(c)(10), the Commission assesses whether the Agreement: (1) improves the net financial position of the Postal Service or enhances the performance of operational functions; (2) will not cause unreasonable harm to the marketplace; and (3) will be available on reasonable terms to similarly situated mailers. The Commission finds, with respect to the first criterion, that the negotiated rates in the Agreement will improve the net financial position of the Postal Service, as they will generate higher revenues, contribution, and cost coverage than otherwise applicable UPU default rates. The Commission finds, with respect to the second criterion, that the Agreement will not cause unreasonable harm to the marketplace for the reasons referred to by the Postal Service. With respect to the third criterion, the Commission notes that in Order No. 163, it observed that given the Postal Service's narrow characterization of the agreement under consideration in that case, the Postal Service's position on the inapplicability of this consideration to the facts was correct, and it would be largely an academic exercise to consider whether a broader characterization should be employed.⁶ The Commission reaches the same conclusion on the facts of this case.

Functional equivalence. The Commission has considered whether the 2015 Agreement is functionally equivalent to the Baseline Agreement. The Commission finds that the differences between the two agreements do not foreclose a finding that the agreements are functionally equivalent, and therefore concludes that the 2015 Agreement may be included within the Foreign Postal Operators 1 product.

Reporting exceptions. The Postal Service proposes that no special data collection plan be created for the Agreement, essentially seeking a waiver of the data

⁶ See Docket Nos. MC2009-7 and R2009-1, Order Concerning Bilateral Agreement with Canada Post for Inbound Market Dominant Services, December 31, 2008, at 9-10 (Order No. 163).

collection reporting requirements in 39 C.F.R. § 3010.43. Request at 6. Instead, it intends to report information under the Agreement through the ACR and provide information about mail flows from Korea Post during the course of the ACR review process. *Id.* The Commission grants the waiver of section 3010.43. The Commission also approves the request for an exception from separate service performance reporting under 39 C.F.R. § 3055(a)(3) on the basis that the standing exception in Order No. 996 continues to apply.⁷

Follow up submissions. The Postal Service shall notify the Commission if the effective date of the 2015 Agreement differs from the intended effective date. The Postal Service shall also promptly notify the Commission if the 2015 Agreement terminates earlier than intended. In addition, within 30 days of the Agreement's expiration date, or early termination, the Postal Service shall file costs, volumes, and revenues associated with the Agreement.

VI. ORDERING PARAGRAPHS

It is ordered:

1. The Commission approves the Type 2 rate adjustment requested in this docket.
2. The Commission approves the inclusion of the 2015 Agreement filed in Docket No. R2015-1 within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-35) product, as reflected in the attachment to this Order.
3. The Postal Service shall notify the Commission if the effective date of the 2015 Agreement differs from intended effective date.

⁷ See Docket No. R2012-2, Order Concerning an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement, November 23, 2011, at 7 (Order No. 996).

4. The Postal Service shall promptly notify the Commission if the 2015 Agreement terminates early.
5. Within 30 days of expiration, or early termination, of the 2015 Agreement, the Postal Service shall file costs, volumes, and revenues associated with the Agreement.

By the Commission.

Shoshana M. Grove
Secretary

CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

Part A—Market Dominant Products

1600 Negotiated Service Agreements

1602.3.5 Products Included in Group (Agreements)
Each product is followed by a list of agreements included within that product.

Inbound Market Dominant Multi-Service Agreements with Foreign Postal
Operators 1

Baseline Reference

Docket Nos. MC2010-35, R2010-5 and R2010-6
PRC Order No. 549, September 30, 2010

Included Agreements

Korea Post Agreement, R2013-9 and R2015-1, expires November 30
~~2014~~ 2015.
